

111TH CONGRESS
1ST SESSION

S. 1677

To reauthorize the Defense Production Act of 1950, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2009

Mr. DODD (for himself and Mr. SHELBY) introduced the following bill; which
was read twice, considered, read the third time, and passed

A BILL

To reauthorize the Defense Production Act of 1950, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Defense Production Act Reauthorization of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reauthorization of Defense Production Act of 1950.
- Sec. 3. Declaration of policy.
- Sec. 4. Priority in contracts and orders.
- Sec. 5. Designation of energy as a strategic and critical material.
- Sec. 6. Strengthening domestic capability.
- Sec. 7. Expansion of productive capacity and supply.
- Sec. 8. Definitions.

Sec. 9. Voluntary agreements and plans of action for national defense.

Sec. 10. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports.

Sec. 11. Defense Production Act Committee.

Sec. 12. Annual report on impact of offsets.

1 **SEC. 2. REAUTHORIZATION OF DEFENSE PRODUCTION ACT**
 2 **OF 1950.**

3 (a) TERMINATION OF ACT.—

4 (1) TERMINATION.—Section 717 of the Defense
 5 Production Act of 1950 (50 U.S.C. App. 2166) is
 6 amended—

7 (A) by striking subsections (a) and (b) and
 8 inserting the following:

9 “(a) Title I (except section 104), title III, and title
 10 VII (except sections 707, 708, and 721) shall terminate
 11 on September 30, 2014, except that all authority extended
 12 under title III on or after the date of enactment of the
 13 Defense Production Act Reauthorization of 2009 shall be
 14 effective for any fiscal year only to such extent or in such
 15 amounts as are provided in advance in appropriations
 16 Acts.

17 “(b) Notwithstanding subsection (a), any agency cre-
 18 ated under a provision of law that is terminated under
 19 subsection (a) may continue in existence, for purposes of
 20 liquidation, for a period not to exceed 6 months, beginning
 21 on the date of termination of the provision authorizing the
 22 creation of such agency under subsection (a).”; and

1 (B) in subsection (c), by striking the sec-
 2 ond undesignated paragraph.

3 (2) REPEALS.—Titles II, IV, V, and VI of the
 4 Defense Production Act of 1950 (50 U.S.C. App.
 5 2151 et seq., 2101 et seq., 2121 et seq., and 2131
 6 et seq.) are repealed.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 8 711 of the Defense Production Act of 1950 (50 U.S.C.
 9 App. 2161) is amended—

10 (1) in subsection (a)—

11 (A) in the first sentence, by striking “(in-
 12 cluding” and all that follows through “) by”
 13 and inserting “by”; and

14 (B) by striking “(a) AUTHORIZATION.—
 15 Except as provided in subsection (b), there”
 16 and inserting “There”; and

17 (2) by striking subsection (b).

18 **SEC. 3. DECLARATION OF POLICY.**

19 (a) FINDINGS.—Section 2 of the Defense Production
 20 Act of 1950 (50 U.S.C. App. 2062) is amended to read
 21 as follows:

22 **“SEC. 2. DECLARATION OF POLICY.**

23 “(a) FINDINGS.—Congress finds that—

24 “(1) the security of the United States is de-
 25 pendent on the ability of the domestic industrial

1 base to supply materials and services for the na-
2 tional defense and to prepare for and respond to
3 military conflicts, natural or man-caused disasters,
4 or acts of terrorism within the United States;

5 “(2) to ensure the vitality of the domestic in-
6 dustrial base, actions are needed—

7 “(A) to promote industrial resources pre-
8 paredness in the event of domestic or foreign
9 threats to the security of the United States;

10 “(B) to support continuing improvements
11 in industrial efficiency and responsiveness;

12 “(C) to provide for the protection and res-
13 toration of domestic critical infrastructure oper-
14 ations under emergency conditions; and

15 “(D) to respond to actions taken outside of
16 the United States that could result in reduced
17 supplies of strategic and critical materials, in-
18 cluding energy, necessary for national defense
19 and the general economic well-being of the
20 United States;

21 “(3) in order to provide for the national secu-
22 rity, the national defense preparedness effort of the
23 United States Government requires—

1 “(A) preparedness programs to respond to
2 both domestic emergencies and international
3 threats to national defense;

4 “(B) measures to improve the domestic in-
5 dustrial base for national defense;

6 “(C) the development of domestic produc-
7 tive capacity to meet—

8 “(i) essential national defense needs
9 that can result from emergency conditions;
10 and

11 “(ii) unique technological require-
12 ments; and

13 “(D) the diversion of certain materials and
14 facilities from ordinary use to national defense
15 purposes, when national defense needs cannot
16 otherwise be satisfied in a timely fashion;

17 “(4) to meet the requirements referred to in
18 this subsection, this Act provides the President with
19 an array of authorities to shape national defense
20 preparedness programs and to take appropriate
21 steps to maintain and enhance the domestic indus-
22 trial base;

23 “(5) in order to ensure national defense pre-
24 paredness, it is necessary and appropriate to assure

1 the availability of domestic energy supplies for na-
2 tional defense needs;

3 “(6) to further assure the adequate mainte-
4 nance of the domestic industrial base, to the max-
5 imum extent possible, domestic energy supplies
6 should be augmented through reliance on renewable
7 energy sources (including solar, geothermal, wind,
8 and biomass sources), more efficient energy storage
9 and distribution technologies, and energy conserva-
10 tion measures;

11 “(7) much of the industrial capacity that is re-
12 lied upon by the United States Government for mili-
13 tary production and other national defense purposes
14 is deeply and directly influenced by—

15 “(A) the overall competitiveness of the in-
16 dustrial economy of the United States; and

17 “(B) the ability of industries in the United
18 States, in general, to produce internationally
19 competitive products and operate profitably
20 while maintaining adequate research and devel-
21 opment to preserve competitiveness with respect
22 to military and civilian production; and

23 “(8) the inability of industries in the United
24 States, especially smaller subcontractors and sup-
25 pliers, to provide vital parts and components and

1 other materials would impair the ability to sustain
2 the Armed Forces of the United States in combat
3 for longer than a short period.

4 “(b) STATEMENT OF POLICY.—It is the policy of the
5 United States that—

6 “(1) to ensure the adequacy of productive ca-
7 pacity and supply, Federal departments and agen-
8 cies that are responsible for national defense acquisi-
9 tion should continuously assess the capability of the
10 domestic industrial base to satisfy production re-
11 quirements under both peacetime and emergency
12 conditions, specifically evaluating the availability of
13 adequate production sources, including subcontractors
14 and suppliers, materials, skilled labor, and professional
15 and technical personnel;

16 “(2) every effort should be made to foster co-
17 operation between the defense and commercial sectors
18 for research and development and for acquisition
19 of materials, components, and equipment;

20 “(3) plans and programs to carry out the purposes
21 of this Act should be undertaken with due consideration
22 for promoting efficiency and competition;

23 “(4) in providing United States Government financial
24 assistance under this Act to correct a domestic
25 industrial base shortfall, the President should

1 give consideration to the creation or maintenance of
2 production sources that will remain economically via-
3 ble after such assistance has ended;

4 “(5) authorities under this Act should be used
5 to reduce the vulnerability of the United States to
6 terrorist attacks, and to minimize the damage and
7 assist in the recovery from terrorist attacks that
8 occur in the United States;

9 “(6) in order to ensure productive capacity in
10 the event of an attack on the United States, the
11 United States Government should encourage the ge-
12 ographic dispersal of industrial facilities in the
13 United States to discourage the concentration of
14 such productive facilities within limited geographic
15 areas that are vulnerable to attack by an enemy of
16 the United States;

17 “(7) to ensure that essential national defense
18 requirements are met, consideration should be given
19 to stockpiling strategic materials, to the extent that
20 such stockpiling is economical and feasible; and

21 “(8) in the construction of any industrial facil-
22 ity owned by the United States Government, in the
23 rendition of any financial assistance by the United
24 States Government for the construction, expansion,
25 or improvement of any industrial facility, and in the

1 production of goods and services, under this Act or
2 any other provision of law, each department and
3 agency of the United States Government should
4 apply, under the coordination of the Federal Emer-
5 gency Management Agency, when practicable and
6 consistent with existing law and the desirability for
7 maintaining a sound economy, the principle of geo-
8 graphic dispersal of such facilities in the interest of
9 national defense.”.

10 **SEC. 4. PRIORITY IN CONTRACTS AND ORDERS.**

11 Section 101 of the Defense Production Act of 1950
12 (50 U.S.C. App. 2071) is amended by adding at the end
13 the following:

14 “(d) The head of each Federal agency to which the
15 President delegates authority under this section shall—

16 “(1) not later than 270 days after the date of
17 enactment of the Defense Production Act Reauthor-
18 ization of 2009, issue final rules, in accordance with
19 section 553 of title 5, United States Code, that es-
20 tablish standards and procedures by which the prior-
21 ities and allocations authority under this section is
22 used to promote the national defense, under both
23 emergency and nonemergency conditions; and

24 “(2) as appropriate and to the extent prac-
25 ticable, consult with the heads of other Federal

1 agencies to develop a consistent and unified Federal
2 priorities and allocations system.”.

3 **SEC. 5. DESIGNATION OF ENERGY AS A STRATEGIC AND**
4 **CRITICAL MATERIAL.**

5 Section 106 of the Defense Production Act of 1950
6 (50 U.S.C. App. 2076) is amended—

7 (1) by striking “such designation” and all that
8 follows through “(1)” and inserting “such designa-
9 tion”;

10 (2) by striking “; or” and inserting a period;
11 and

12 (3) by striking paragraph (2).

13 **SEC. 6. STRENGTHENING DOMESTIC CAPABILITY.**

14 Section 107 of the Defense Production Act of 1950
15 (50 U.S.C. App. 2077) is amended—

16 (1) in subsection (a)—

17 (A) by inserting “restore,” after “mod-
18 ernize,”; and

19 (B) by inserting “materials,” after
20 “items,”; and

21 (2) in subsection (b)—

22 (A) by striking paragraph (1);

23 (B) by redesignating paragraphs (2) and

24 (3) as paragraphs (1) and (2), respectively; and

1 (C) in paragraph (1), as so redesignated,
 2 by striking “or critical technology items” and
 3 inserting “, critical technology items, essential
 4 materials, and industrial resources”.

5 **SEC. 7. EXPANSION OF PRODUCTIVE CAPACITY AND SUP-**
 6 **PLY.**

7 Title III of the Defense Production Act of 1950 (50
 8 U.S.C. App. 2091 et seq.) is amended to read as follows:

9 **“TITLE III—EXPANSION OF PRO-**
 10 **DUCTIVE CAPACITY AND SUP-**
 11 **PLY**

12 **“SEC. 301. PRESIDENTIAL AUTHORIZATION FOR THE NA-**
 13 **TIONAL DEFENSE.**

14 “(a) EXPEDITING PRODUCTION AND DELIVERIES OR
 15 SERVICES.—

16 “(1) AUTHORIZED ACTIVITIES.—To reduce cur-
 17 rent or projected shortfalls of industrial resources,
 18 critical technology items, or essential materials need-
 19 ed for national defense purposes, subject to such
 20 regulations as the President may prescribe, the
 21 President may authorize a guaranteeing agency to
 22 provide guarantees of loans by private institutions
 23 for the purpose of financing any contractor, subcon-
 24 tractor, provider of critical infrastructure, or other
 25 person in support of production capabilities or sup-

1 plies that are deemed by the guaranteeing agency to
2 be necessary to create, maintain, expedite, expand,
3 protect, or restore production and deliveries or serv-
4 ices essential to the national defense.

5 “(2) PRESIDENTIAL DETERMINATIONS RE-
6 QUIRED.—Except during a period of national emer-
7 gency declared by Congress or the President, a loan
8 guarantee may be entered into under this section
9 only if the President determines that—

10 “(A) the loan guarantee is for an activity
11 that supports the production or supply of an in-
12 dustrial resource, critical technology item, or
13 material that is essential for national defense
14 purposes;

15 “(B) without a loan guarantee, credit is
16 not available to the loan applicant under rea-
17 sonable terms or conditions sufficient to finance
18 the activity;

19 “(C) the loan guarantee is the most cost
20 effective, expedient, and practical alternative for
21 meeting the needs of the Federal Government;

22 “(D) the prospective earning power of the
23 loan applicant and the character and value of
24 the security pledged provide a reasonable assur-
25 ance of repayment of the loan to be guaranteed;

1 “(E) the loan to be guaranteed bears inter-
2 est at a rate determined by the Secretary of the
3 Treasury to be reasonable, taking into account
4 the then-current average yield on outstanding
5 obligations of the United States with remaining
6 periods of maturity comparable to the maturity
7 of the loan;

8 “(F) the loan agreement for the loan to be
9 guaranteed provides that no provision of the
10 loan agreement may be amended or waived
11 without the consent of the fiscal agent of the
12 United States for the guarantee; and

13 “(G) the loan applicant has provided or
14 will provide—

15 “(i) an assurance of repayment, as de-
16 termined by the President; and

17 “(ii) security—

18 “(I) in the form of a performance
19 bond, insurance, collateral, or other
20 means acceptable to the fiscal agent
21 of the United States; and

22 “(II) in an amount equal to not
23 less than 20 percent of the amount of
24 the loan.

1 “(3) LIMITATIONS ON LOANS.—Loans under
2 this section may be—

3 “(A) made or guaranteed under the au-
4 thority of this section only to the extent that an
5 appropriations Act—

6 “(i) provides, in advance, budget au-
7 thority for the cost of such guarantees, as
8 defined in section 502 of the Federal Cred-
9 it Reform Act of 1990 (2 U.S.C. 661a);
10 and

11 “(ii) establishes a limitation on the
12 total loan principal that may be guaran-
13 teed; and

14 “(B) made without regard to the limita-
15 tions of existing law, other than section 1341 of
16 title 31, United States Code.

17 “(b) FISCAL AGENTS OF THE UNITED STATES.—

18 “(1) IN GENERAL.—Any Federal agency or any
19 Federal reserve bank, when designated by the Presi-
20 dent, is hereby authorized to act, on behalf of any
21 guaranteeing agency, as fiscal agent of the United
22 States in the making of such contracts of guarantee
23 and in otherwise carrying out the purposes of this
24 section.

1 “(2) FUNDS.—All such funds as may be nec-
2 essary to enable any fiscal agent described in para-
3 graph (1) to carry out any guarantee made by it on
4 behalf of any guaranteeing agency shall be supplied
5 and disbursed by or under authority from such guar-
6 anteeing agency.

7 “(3) LIMIT ON LIABILITY.—No fiscal agent de-
8 scribed in paragraph (1) shall have any responsi-
9 bility or accountability, except as agent in taking
10 any action pursuant to or under authority of this
11 section.

12 “(4) REIMBURSEMENTS.—Each fiscal agent de-
13 scribed in paragraph (1) shall be reimbursed by each
14 guaranteeing agency for all expenses and losses in-
15 curred by such fiscal agent in acting as agent on be-
16 half of such guaranteeing agency, including, notwith-
17 standing any other provision of law, attorneys’ fees
18 and expenses of litigation.

19 “(c) OVERSIGHT.—

20 “(1) IN GENERAL.—All actions and operations
21 of fiscal agents under authority of or pursuant to
22 this section shall be subject to the supervision of the
23 President, and to such regulations as the President
24 may prescribe.

1 “(2) OTHER AUTHORITY.—The President is au-
2 thorized to prescribe—

3 “(A) either specifically or by maximum
4 limits or otherwise, rates of interest, guarantee
5 and commitment fees, and other charges which
6 may be made in connection with loans, dis-
7 counts, advances, or commitments guaranteed
8 by the guaranteeing agencies through fiscal
9 agents under this section; and

10 “(B) regulations governing the forms and
11 procedures (which shall be uniform to the ex-
12 tent practicable) to be utilized in connection
13 with such guarantees.

14 “(d) AGGREGATE GUARANTEE AMOUNTS.—

15 “(1) INDUSTRIAL RESOURCE AND CRITICAL
16 TECHNOLOGY SHORTFALLS.—

17 “(A) IN GENERAL.—If the making of any
18 guarantee or obligation of the Federal Govern-
19 ment under this title relating to a domestic in-
20 dustrial base shortfall would cause the aggre-
21 gate outstanding amount of all guarantees for
22 such shortfall to exceed \$50,000,000, any such
23 guarantee may be made only—

24 “(i) if the President has notified the
25 Committee on Banking, Housing, and

1 Urban Affairs of the Senate and the Com-
2 mittee on Financial Services of the House
3 of Representatives in writing of the pro-
4 posed guarantee; and

5 “(ii) after the 30-day period following
6 the date on which notice under clause (i)
7 is provided.

8 “(B) WAIVERS AUTHORIZED.—The re-
9 quirements of subparagraph (A) may be
10 waived—

11 “(i) during a period of national emer-
12 gency declared by Congress or the Presi-
13 dent; or

14 “(ii) upon a determination by the
15 President, on a nondelegable basis, that a
16 specific guarantee is necessary to avert an
17 industrial resource or critical technology
18 item shortfall that would severely impair
19 national defense capability.

20 “(2) OTHER LIMITATIONS.—The authority con-
21 ferred by this section shall not be used primarily to
22 prevent the financial insolvency or bankruptcy of
23 any person, unless—

24 “(A) the President certifies that the insol-
25 vency or bankruptcy would have a direct and

1 substantially adverse effect upon national de-
2 fense production; and

3 “(B) a copy of the certification under sub-
4 paragraph (A), together with a detailed jus-
5 tification thereof, is transmitted to the Com-
6 mittee on Banking, Housing, and Urban Affairs
7 of the Senate and the Committee on Financial
8 Services of the House of Representatives not
9 later than 10 days prior to the exercise of that
10 authority for such use.

11 **“SEC. 302. LOANS TO PRIVATE BUSINESS ENTERPRISES.**

12 “(a) LOAN AUTHORITY.—To reduce current or pro-
13 jected shortfalls of industrial resources, critical technology
14 items, or materials essential for the national defense, the
15 President may make provision for loans to private busi-
16 ness enterprises (including nonprofit research corporations
17 and providers of critical infrastructure) for the creation,
18 maintenance, expansion, protection, or restoration of ca-
19 pacity, the development of technological processes, or the
20 production of essential materials, including the explo-
21 ration, development, and mining of strategic and critical
22 metals and minerals.

23 “(b) CONDITIONS OF LOANS.—Loans may be made
24 under this section on such terms and conditions as the
25 President deems necessary, except that—

1 “(1) financial assistance may be extended only
2 to the extent that it is not otherwise available from
3 private sources on reasonable terms; and

4 “(2) during periods of national emergency de-
5 clared by the Congress or the President, no such
6 loan may be made unless the President determines
7 that—

8 “(A) the loan is for an activity that sup-
9 ports the production or supply of an industrial
10 resource, critical technology item, or material
11 that is essential to the national defense;

12 “(B) without the loan, United States in-
13 dustry cannot reasonably be expected to provide
14 the needed capacity, technological processes, or
15 materials in a timely manner;

16 “(C) the loan is the most cost-effective, ex-
17 pedient, and practical alternative method for
18 meeting the need;

19 “(D) the prospective earning power of the
20 loan applicant and the character and value of
21 the security pledged provide a reasonable assur-
22 ance of repayment of the loan in accordance
23 with the terms of the loan, as determined by
24 the President; and

1 “(E) the loan bears interest at a rate de-
 2 termined by the Secretary of the Treasury to be
 3 reasonable, taking into account the then-current
 4 average yield on outstanding obligations of the
 5 United States with remaining periods of matu-
 6 rity comparable to the maturity of the loan.

7 “(c) LIMITATIONS ON LOANS.—Loans under this sec-
 8 tion may be—

9 “(1) made or guaranteed under the authority of
 10 this section only to the extent that an appropriations
 11 Act—

12 “(A) provides, in advance, budget author-
 13 ity for the cost of such guarantees, as defined
 14 in section 502 of the Federal Credit Reform
 15 Act of 1990 (2 U.S.C. 661a); and

16 “(B) establishes a limitation on the total
 17 loan principal that may be guaranteed; and

18 “(2) made without regard to the limitations of
 19 existing law, other than section 1341 of title 31,
 20 United States Code.

21 “(d) AGGREGATE LOAN AMOUNTS.—

22 “(1) IN GENERAL.—If the making of any loan
 23 under this section to correct a shortfall would cause
 24 the aggregate outstanding amount of all obligations
 25 of the Federal Government under this title relating

1 to such shortfall to exceed \$50,000,000, such loan
 2 may be made only—

3 “(A) if the President has notified the Com-
 4 mittee on Banking, Housing, and Urban Affairs
 5 of the Senate and the Committee on Financial
 6 Services of the House of Representatives, in
 7 writing, of the proposed loan; and

8 “(B) after the 30-day period following the
 9 date on which notice under subparagraph (A) is
 10 provided.

11 “(2) WAIVERS AUTHORIZED.—The require-
 12 ments of paragraph (1) may be waived—

13 “(A) during a period of national emergency
 14 declared by the Congress or the President; and

15 “(B) upon a determination by the Presi-
 16 dent, on a nondelegable basis, that a specific
 17 loan is necessary to avert an industrial resource
 18 or critical technology shortfall that would se-
 19 verely impair national defense capability.

20 **“SEC. 303. OTHER PRESIDENTIAL ACTION AUTHORIZED.**

21 “(a) IN GENERAL.—

22 “(1) IN GENERAL.—To create, maintain, pro-
 23 tect, expand, or restore domestic industrial base ca-
 24 pabilities essential for the national defense, the
 25 President may make provision—

1 “(A) for purchases of or commitments to
2 purchase an industrial resource or a critical
3 technology item, for Government use or resale;

4 “(B) for the encouragement of exploration,
5 development, and mining of critical and stra-
6 tegic materials, and other materials;

7 “(C) for the development of production ca-
8 pabilities; and

9 “(D) for the increased use of emerging
10 technologies in security program applications
11 and the rapid transition of emerging tech-
12 nologies—

13 “(i) from Government-sponsored re-
14 search and development to commercial ap-
15 plications; and

16 “(ii) from commercial research and
17 development to national defense applica-
18 tions.

19 “(2) TREATMENT OF CERTAIN AGRICULTURAL
20 COMMODITIES.—A purchase for resale under this
21 subsection shall not include that part of the supply
22 of an agricultural commodity which is domestically
23 produced, except to the extent that such domestically
24 produced supply may be purchased for resale for in-
25 dustrial use or stockpiling.

1 “(3) TERMS OF SALES.—No commodity pur-
 2 chased under this subsection shall be sold at less
 3 than—

4 “(A) the established ceiling price for such
 5 commodity, except that minerals, metals, and
 6 materials shall not be sold at less than the es-
 7 tablished ceiling price, or the current domestic
 8 market price, whichever is lower; or

9 “(B) if no ceiling price has been estab-
 10 lished, the higher of—

11 “(i) the current domestic market price
 12 for such commodity; or

13 “(ii) the minimum sale price estab-
 14 lished for agricultural commodities owned
 15 or controlled by the Commodity Credit
 16 Corporation, as provided in section 407 of
 17 the Agricultural Act of 1949 (7 U.S.C.
 18 1427).

19 “(4) DELIVERY DATES.—No purchase or com-
 20 mitment to purchase any imported agricultural com-
 21 modity shall specify a delivery date which is more
 22 than 1 year after the date of termination of this sec-
 23 tion.

24 “(5) PRESIDENTIAL DETERMINATIONS.—Ex-
 25 cept as provided in paragraph (7), the President

1 may not execute a contract under this subsection un-
 2 less the President determines that—

3 “(A) the industrial resource, material, or
 4 critical technology item is essential to the na-
 5 tional defense; and

6 “(B) without Presidential action under this
 7 section, United States industry cannot reason-
 8 ably be expected to provide the capability for
 9 the needed industrial resource, material, or crit-
 10 ical technology item in a timely manner.

11 “(6) NOTIFICATION TO CONGRESS OF SHORT-
 12 FALL.—

13 “(A) IN GENERAL.—Except as provided in
 14 paragraph (7), the President shall provide writ-
 15 ten notice to the Committee on Banking, Hous-
 16 ing, and Urban Affairs of the Senate and the
 17 Committee on Financial Services of the House
 18 of Representatives of a domestic industrial base
 19 shortfall prior to taking action under this sub-
 20 section to remedy the shortfall. The notice shall
 21 include the determinations made by the Presi-
 22 dent under paragraph (5).

23 “(B) AGGREGATE AMOUNTS.—If the tak-
 24 ing of any action under this subsection to cor-
 25 rect a domestic industrial base shortfall would

1 cause the aggregate outstanding amount of all
2 such actions for such shortfall to exceed
3 \$50,000,000, the action or actions may be
4 taken only after the 30-day period following the
5 date on which the Committee on Banking,
6 Housing, and Urban Affairs of the Senate and
7 the Committee on Financial Services of the
8 House of Representatives have been notified in
9 writing of the proposed action.

10 “(7) WAIVERS AUTHORIZED.—The require-
11 ments of paragraphs (1) through (6) may be
12 waived—

13 “(A) during a period of national emergency
14 declared by the Congress or the President; or

15 “(B) upon a determination by the Presi-
16 dent, on a nondelegable basis, that action is
17 necessary to avert an industrial resource or
18 critical technology item shortfall that would se-
19 verely impair national defense capability.

20 “(b) EXEMPTION FOR CERTAIN LIMITATIONS.—Sub-
21 ject to the limitations in subsection (a), purchases and
22 commitments to purchase and sales under subsection (a)
23 may be made without regard to the limitations of existing
24 law (other than section 1341 of title 31, United States
25 Code), for such quantities, and on such terms and condi-

1 tions, including advance payments, and for such periods,
 2 but not extending beyond a date that is not more than
 3 10 years from the date on which such purchase, purchase
 4 commitment, or sale was initially made, as the President
 5 deems necessary, except that purchases or commitments
 6 to purchase involving higher than established ceiling prices
 7 (or if no such established ceiling prices exist, currently
 8 prevailing market prices) or anticipated loss on resale shall
 9 not be made, unless it is determined that supply of the
 10 materials could not be effectively increased at lower prices
 11 or on terms more favorable to the Government, or that
 12 such purchases are necessary to assure the availability to
 13 the United States of overseas supplies.

14 “(c) PRESIDENTIAL FINDINGS.—

15 “(1) IN GENERAL.—The President may take
 16 the actions described in paragraph (2), if the Presi-
 17 dent finds that—

18 “(A) under generally fair and equitable
 19 ceiling prices, for any raw or nonprocessed ma-
 20 terial, there will result a decrease in supplies
 21 from high-cost sources of such material, and
 22 that the continuation of such supplies is nec-
 23 essary to carry out the objectives of this title;
 24 or

1 “(B) an increase in cost of transportation
2 is temporary in character and threatens to im-
3 pair maximum production or supply in any area
4 at stable prices of any materials.

5 “(2) SUBSIDY PAYMENTS AUTHORIZED.—Upon
6 a finding under paragraph (1), the President may
7 make provision for subsidy payments on any such
8 domestically produced material, other than an agri-
9 cultural commodity, in such amounts and in such
10 manner (including purchases of such material and
11 its resale at a loss), and on such terms and condi-
12 tions, as the President determines to be necessary to
13 ensure that supplies from such high-cost sources are
14 continued, or that maximum production or supply in
15 such area at stable prices of such materials is main-
16 tained, as the case may be.

17 “(d) INCIDENTAL AUTHORITY.—The procurement
18 power granted to the President by this section shall in-
19 clude the power to transport and store and have processed
20 and refined any materials procured under this section.

21 “(e) INSTALLATION OF EQUIPMENT IN INDUSTRIAL
22 FACILITIES.—

23 “(1) INSTALLATION AUTHORIZED.—If the
24 President determines that such action will aid the
25 national defense, the President is authorized—

1 “(A) to procure and install additional
2 equipment, facilities, processes or improvements
3 to plants, factories, and other industrial facili-
4 ties owned by the Federal Government;

5 “(B) to procure and install equipment
6 owned by the Federal Government in plants,
7 factories, and other industrial facilities owned
8 by private persons;

9 “(C) to provide for the modification or ex-
10 pansion of privately owned facilities, including
11 the modification or improvement of production
12 processes, when taking actions under section
13 301, 302, or this section; and

14 “(D) to sell or otherwise transfer equip-
15 ment owned by the Federal Government and in-
16 stalled under this subsection to the owners of
17 such plants, factories, or other industrial facili-
18 ties.

19 “(2) INDEMNIFICATION.—The owner of any
20 plant, factory, or other industrial facility that re-
21 ceives equipment owned by the Federal Government
22 under this section shall agree—

23 “(A) to waive any claim against the United
24 States under section 107 or 113 of the Com-
25 prehensive Environmental Response, Compensa-

1 tion, and Liability Act of 1980 (42 U.S.C. 9607
2 and 9613); and

3 “(B) to indemnify the United States
4 against any claim described in paragraph (1)
5 made by a third party that arises out of the
6 presence or use of equipment owned by the
7 Federal Government.

8 “(f) EXCESS METALS, MINERALS, AND MATE-
9 RIALS.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of law to the contrary, metals, minerals,
12 and materials acquired pursuant to this section
13 which, in the judgment of the President, are excess
14 to the needs of programs under this Act, shall be
15 transferred to the National Defense Stockpile estab-
16 lished by the Strategic and Critical Materials Stock
17 Piling Act (50 U.S.C. 98 et seq.), when the Presi-
18 dent deems such action to be in the public interest.

19 “(2) TRANSFERS AT NO CHARGE.—Transfers
20 made pursuant to this subsection shall be made
21 without charge against or reimbursement from funds
22 appropriated for the purposes of the Strategic and
23 Critical Materials Stock Piling Act (50 U.S.C. 98 et
24 seq.), except that costs incident to such transfer,

1 other than acquisition costs, shall be paid or reim-
 2 bursed from such funds.

3 “(g) SUBSTITUTES.—When, in the judgement of the
 4 President, it will aid the national defense, the President
 5 may make provision for the development of substitutes for
 6 strategic and critical materials, critical components, crit-
 7 ical technology items, and other industrial resources.

8 **“SEC. 304. DEFENSE PRODUCTION ACT FUND.**

9 “(a) ESTABLISHMENT OF FUND.—There is estab-
 10 lished in the Treasury of the United States a separate
 11 fund to be known as the ‘Defense Production Act Fund’
 12 (in this section referred to as the ‘Fund’).

13 “(b) MONEYS IN FUND.—There shall be credited to
 14 the Fund—

15 “(1) all moneys appropriated for the Fund, as
 16 authorized by section 711; and

17 “(2) all moneys received by the Fund on trans-
 18 actions entered into pursuant to section 303.

19 “(c) USE OF FUND.—The Fund shall be available to
 20 carry out the provisions and purposes of this title, subject
 21 to the limitations set forth in this Act and in appropria-
 22 tions Acts.

23 “(d) DURATION OF FUND.—Moneys in the Fund
 24 shall remain available until expended.

1 “(e) FUND BALANCE.—The Fund balance at the
 2 close of each fiscal year shall not exceed \$750,000,000,
 3 excluding any moneys appropriated to the Fund during
 4 that fiscal year or obligated funds. If, at the close of any
 5 fiscal year, the Fund balance exceeds \$750,000,000, the
 6 amount in excess of \$750,000,000 shall be paid into the
 7 general fund of the Treasury.

8 “(f) FUND MANAGER.—The President shall des-
 9 ignate a Fund manager. The duties of the Fund manager
 10 shall include—

11 “(1) determining the liability of the Fund in ac-
 12 cordance with subsection (g);

13 “(2) ensuring the visibility and accountability of
 14 transactions engaged in through the Fund; and

15 “(3) reporting to the Congress each year re-
 16 garding activities of the Fund during the previous
 17 fiscal year.

18 “(g) LIABILITIES AGAINST FUND.—When any agree-
 19 ment entered into pursuant to this title after December
 20 31, 1991, imposes any contingent liability upon the United
 21 States, such liability shall be considered an obligation
 22 against the Fund.”.

23 **SEC. 8. DEFINITIONS.**

24 Section 702 of the Defense Production Act of 1950
 25 (50 U.S.C. App. 2152) is amended—

1 (1) in paragraph (1), by striking “military
2 equipment identified by the Secretary of Defense”
3 and inserting “equipment identified by the Presi-
4 dent”;

5 (2) by striking paragraphs (2), (4), (9), and
6 (18);

7 (3) by redesignating paragraph (3) as para-
8 graph (2);

9 (4) by inserting after paragraph (2), as so re-
10 designated, the following:

11 “(3) CRITICAL TECHNOLOGY.—The term ‘crit-
12 ical technology’ includes any technology designated
13 by the President to be essential to the national de-
14 fense.”;

15 (5) by redesignating paragraphs (5) through
16 (8) as paragraphs (4) through (7), respectively;

17 (6) in paragraph (6), as so redesignated—

18 (A) in the paragraph heading, by striking
19 “DEFENSE”;

20 (B) by striking “domestic defense” and in-
21 serting “domestic”; and

22 (C) by striking “graduated mobilization,”;

23 (7) by redesignating paragraphs (10) and (11)
24 as paragraphs (8) and (9), respectively;

(8) by inserting after paragraph (9), as so redesignated, the following:

“(10) GUARANTEEING AGENCY.—The term ‘guaranteeing agency’ means a department or agency of the United States engaged in procurement for the national defense.

“(11) HOMELAND SECURITY.—The term ‘homeland security’ includes efforts—

“(A) to prevent terrorist attacks within the United States;

“(B) to reduce the vulnerability of the United States to terrorism;

“(C) to minimize damage from a terrorist attack in the United States; and

“(D) to recover from a terrorist attack in the United States.”;

(9) in paragraph (12), by striking “capacity” and inserting “base”;

(10) in paragraph (14), by striking “military assistance to any foreign nation” and inserting “military or critical infrastructure assistance to any foreign nation, homeland security”; and

(11) in paragraph (16)—

(A) in subparagraph (A), by striking “or” at the end;

1 (B) in subparagraph (B), by striking the
2 period and inserting a semicolon; and

3 (C) by adding at the end the following:

4 “(C) the movement of individuals and
5 property by all modes of civil transportation; or

6 “(D) other national defense programs and
7 activities.”.

8 **SEC. 9. VOLUNTARY AGREEMENTS AND PLANS OF ACTION**
9 **FOR NATIONAL DEFENSE.**

10 Section 708 of the Defense Production Act of 1950
11 (50 U.S.C. App. 2158) is amended—

12 (1) in subsection (c)—

13 (A) in paragraph (1), by striking “defense
14 of the United States” and all that follows
15 through the period and inserting “national de-
16 fense.”; and

17 (B) by adding at the end the following:

18 “(3) Upon a determination by the President, on a
19 nondelegable basis, that a specific voluntary agreement or
20 plan of action is necessary to meet national defense re-
21 quirements resulting from an event that degrades or de-
22 stroys critical infrastructure—

23 “(A) an individual that has been delegated au-
24 thority under paragraph (1) with respect to such
25 agreement or plan shall not be required to consult

1 with the Attorney General or the Federal Trade
2 Commission under paragraph (2)(B); and

3 “(B) the President shall publish a rule in ac-
4 cordance with subsection (e)(2)(B) and publish no-
5 tice in accordance with subsection (e)(3)(B) with re-
6 spect to such agreement or plan as soon as is prac-
7 ticable under the circumstances.”;

8 (2) in subsection (f)(2)—

9 (A) by striking “two years” each place
10 that term appears and inserting “5 years”; and

11 (B) by striking “two-year” and inserting
12 “5-year”; and

13 (3) by striking subsection (n) and inserting the
14 following:

15 “(n) EXEMPTION FROM ADVISORY COMMITTEE ACT
16 PROVISIONS.—Notwithstanding any other provision of
17 law, the Federal Advisory Committee Act (5 U.S.C. App.)
18 and any other provision of Federal law relating to advisory
19 committees shall not apply to—

20 “(1) the consultations referred to in subsection
21 (c)(1); or

22 “(2) any activity conducted under a voluntary
23 agreement or plan of action approved pursuant to
24 this section that complies with the requirements of
25 this section.”.

1 **SEC. 10. EMPLOYMENT OF PERSONNEL; APPOINTMENT**
 2 **POLICIES; NUCLEUS EXECUTIVE RESERVE;**
 3 **USE OF CONFIDENTIAL INFORMATION BY EM-**
 4 **PLOYEES; PRINTING AND DISTRIBUTION OF**
 5 **REPORTS.**

6 Section 710 of the Defense Production Act of 1950
 7 (50 U.S.C. App. 2160) is amended—

8 (1) in subsection (b)—

9 (A) in paragraph (2), by striking clause
 10 (iii);

11 (B) by striking paragraph (4);

12 (C) by redesignating paragraphs (5)
 13 through (8) as paragraphs (4) through (7), re-
 14 spectively; and

15 (D) in paragraph (6), as so redesignated,
 16 by striking “At least” and all that follows
 17 through “survey” and inserting “The Director
 18 of the Office of Personnel Management shall
 19 carry out a biennial survey of”;

20 (2) in subsection (c), by striking the third sen-
 21 tence;

22 (3) in subsection (d), by striking “needed;” and
 23 all that follows through the period and inserting
 24 “needed.”; and

25 (4) in subsection (e)—

1 (A) in the first sentence, by striking
 2 “emergency” and inserting “national defense
 3 emergency, as determined by the President”;
 4 and

5 (B) by striking the third sentence.

6 **SEC. 11. DEFENSE PRODUCTION ACT COMMITTEE.**

7 Section 722 of the Defense Production Act of 1950
 8 (50 U.S.C. App. 2171) is amended to read as follows:

9 **“SEC. 722. DEFENSE PRODUCTION ACT COMMITTEE.**

10 “(a) COMMITTEE ESTABLISHED.—There is estab-
 11 lished the Defense Production Act Committee (in this sec-
 12 tion referred to as the ‘Committee’), which shall advise
 13 the President on the effective use of the authority under
 14 this Act by the departments, agencies, and independent
 15 establishments of the Federal Government to which the
 16 President has delegated authority under this Act.

17 “(b) MEMBERSHIP.—

18 “(1) IN GENERAL.—The members of the Com-
 19 mittee shall be—

20 “(A) the head of each Federal agency to
 21 which the President has delegated authority
 22 under this Act; and

23 “(B) the Chairperson of the Council of
 24 Economic Advisors.

1 “(2) CHAIRPERSON.—The President shall des-
 2 ignate 1 member of the Committee as the Chair-
 3 person of the Committee.

4 “(c) EXECUTIVE DIRECTOR.—

5 “(1) IN GENERAL.—The President shall ap-
 6 point an Executive Director of the Defense Produc-
 7 tion Act Committee (in this section referred to as
 8 the ‘Executive Director’), who shall—

9 “(A) be responsible to the Chairperson of
 10 the Committee; and

11 “(B) carry out such activities relating to
 12 the Committee as the Chairperson may deter-
 13 mine.

14 “(2) APPOINTMENT.—The appointment by the
 15 President shall not be subject to the advice and con-
 16 sent of the Senate.

17 “(3) COMPENSATION.—For pay periods begin-
 18 ning on or after the date on which each Chairperson
 19 is appointed, funds for the pay of the Executive Di-
 20 rector shall be paid from appropriations to the sala-
 21 ries and expenses account of the department or
 22 agency of the Chairperson of the Committee. The
 23 Executive Director shall be compensated at a rate of
 24 pay equivalent to that of a Deputy Assistant Sec-

1 retary (or a comparable position) of the Federal
2 agency of the Chairperson of the Committee.

3 “(d) REPORT.—Not later than the end of the first
4 quarter of each calendar year, the Committee shall submit
5 to the Committee on Banking, Housing, and Urban Af-
6 fairs of the Senate and the Committee on Financial Serv-
7 ices of the House of Representatives a report signed by
8 each member of the Committee that contains—

9 “(1) a review of the authority under this Act of
10 each department, agency, or independent establish-
11 ment of the Federal Government to which the Presi-
12 dent has delegated authority under this Act;

13 “(2) recommendations for the effective use of
14 the authority described in paragraph (1) in a man-
15 ner consistent with the statement of policy under
16 section 2(b);

17 “(3) recommendations for legislation, regula-
18 tions, executive orders, or other action by the Fed-
19 eral Government necessary to improve the use of the
20 authority described in paragraph (1); and

21 “(4) recommendations for improving informa-
22 tion sharing between departments, agencies, and
23 independent establishments of the Federal Govern-
24 ment relating to all aspects of the authority de-
25 scribed in paragraph (1).

1 “(e) FEDERAL ADVISORY COMMITTEE ACT.—The
 2 provisions of the Federal Advisory Committee Act (5
 3 U.S.C. App.) shall not apply to the Committee.”.

4 **SEC. 12. ANNUAL REPORT ON IMPACT OF OFFSETS.**

5 (a) ANNUAL REPORT.—Title VII of the Defense Pro-
 6 duction Act of 1950 (50 U.S.C. App. 2151 et seq.) is
 7 amended by adding at the end the following:

8 **“SEC. 723. ANNUAL REPORT ON IMPACT OF OFFSETS.**

9 “(a) REPORT REQUIRED.—

10 “(1) IN GENERAL.—The President shall submit
 11 to the Committee on Banking, Housing, and Urban
 12 Affairs of the Senate and the Committee on Finan-
 13 cial Services of the House of Representatives, a de-
 14 tailed annual report on the impact of offsets on the
 15 defense preparedness, industrial competitiveness,
 16 employment, and trade of the United States.

17 “(2) DUTIES OF THE SECRETARY OF COM-
 18 MERCE.—The Secretary of Commerce (hereafter in
 19 this subsection referred to as the ‘Secretary’) shall—

20 “(A) prepare the report required by para-
 21 graph (1);

22 “(B) consult with the Secretary of De-
 23 fense, the Secretary of the Treasury, the Sec-
 24 retary of State, and the United States Trade

1 Representative in connection with the prepara-
 2 tion of such report; and

3 “(C) function as the President’s Executive
 4 Agent for carrying out this section.

5 “(b) INTERAGENCY STUDIES AND RELATED DATA.—

6 “(1) PURPOSE OF REPORT.—Each report re-
 7 quired under subsection (a) shall identify the cumu-
 8 lative effects of offset agreements on—

9 “(A) the full range of domestic defense
 10 productive capability (with special attention
 11 paid to the firms serving as lower-tier sub-
 12 contractors or suppliers); and

13 “(B) the domestic defense technology base
 14 as a consequence of the technology transfers as-
 15 sociated with such offset agreements.

16 “(2) USE OF DATA.—Data developed or com-
 17 piled by any agency while conducting any inter-
 18 agency study or other independent study or analysis
 19 shall be made available to the Secretary to facilitate
 20 the execution of the Secretary’s responsibilities with
 21 respect to trade offset and countertrade policy devel-
 22 opment.

23 “(c) NOTICE OF OFFSET AGREEMENTS.—

24 “(1) IN GENERAL.—If a United States firm en-
 25 ters into a contract for the sale of a weapon system

1 or defense-related item to a foreign country or for-
 2 eign firm and such contract is subject to an offset
 3 agreement exceeding \$5,000,000 in value, such firm
 4 shall furnish to the official designated in the regula-
 5 tions promulgated pursuant to paragraph (2) infor-
 6 mation concerning such sale.

7 “(2) REGULATIONS.—The information to be
 8 furnished under paragraph (1) shall be prescribed in
 9 regulations promulgated by the Secretary. Such reg-
 10 ulations shall provide protection from public disclo-
 11 sure for such information, unless public disclosure is
 12 subsequently specifically authorized by the firm fur-
 13 nishing the information.

14 “(d) CONTENTS OF REPORT.—

15 “(1) IN GENERAL.—Each report under sub-
 16 section (a) shall include—

17 “(A) a net assessment of the elements of
 18 the industrial base and technology base covered
 19 by the report;

20 “(B) recommendations for appropriate re-
 21 medial action under the authority of this Act,
 22 or other law or regulations;

23 “(C) a summary of the findings and rec-
 24 ommendations of any interagency studies con-

1 ducted during the reporting period under sub-
2 section (b);

3 “(D) a summary of offset arrangements
4 concluded during the reporting period for which
5 information has been furnished pursuant to
6 subsection (c); and

7 “(E) a summary and analysis of any bilat-
8 eral and multilateral negotiations relating to
9 the use of offsets completed during the report-
10 ing period.

11 “(2) ALTERNATIVE FINDINGS OR REC-
12 OMMENDATIONS.—Each report required under this
13 section shall include any alternative findings or rec-
14 ommendations offered by any departmental Sec-
15 retary, agency head, or the United States Trade
16 Representative to the Secretary.

17 “(e) UTILIZATION OF ANNUAL REPORT IN NEGOTIA-
18 TIONS.—The findings and recommendations of the reports
19 required by subsection (a), and any interagency reports
20 and analyses shall be considered by representatives of the
21 United States during bilateral and multilateral negotia-
22 tions to minimize the adverse effects of offsets.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

24 (1) DEFENSE PRODUCTION ACT AMENDMENTS
25 OF 1992.—Section 123(c)(1)(C) of the Defense Pro-

1 duction Act Amendments of 1992 (50 U.S.C. App.
 2 2099 note) is amended by striking “section 309(a)
 3 of the Defense Production Act of 1950 (50 U.S.C.
 4 App. 2099(a))” and inserting “section 723(a) of the
 5 Defense Production Act of 1950”.

6 (2) AMERICAN HOMEOWNERSHIP AND ECO-
 7 NOMIC OPPORTUNITY ACT OF 2000.—Section 1102(2)
 8 of the American Homeownership and Economic Op-
 9 portunity Act of 2000 (31 U.S.C. 1113 note) is
 10 amended by striking “309 of the Defense Production
 11 Act of 1950 (50 U.S.C. App. 2099)” and inserting
 12 “723 of the Defense Production Act of 1950”.

13 (3) DEFENSE PRODUCTION ACT AMENDMENTS
 14 OF 2003.—Section 7(a) of the Defense Production
 15 Act Amendments of 2003 (50 U.S.C. App. 2099
 16 note) is amended by striking “section 309(a) of the
 17 Defense Production Act of 1950 (50 U.S.C. App.
 18 2099(a))” and inserting “section 723(a) of the De-
 19 fense Production Act of 1950”.

○